SUPREME COURT OF THE UNITED STATES.

No. 256.

FERDINAND N. CLARK, COMPLAINANT AND APPELLANT,

vs.

WILLIAM H. Y. HACKETT, BENJAMIN C. CLARK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW HAMPSHIRE.

GOVERNMENT PRINTING OFFICE.

1207

THE SUPREME COURT OF THE UNITED STATES.

No. 256.

FERDINAND N. CLARK, COMPLAINANT AND APPELL'T,

vs.

WILLIAM H. Y. HACKETT, BENJAMIN C. CLARK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW HAMPSHIRE.

INDEX.

Bill of complaint	1	1
Answer of John Clark	36	10
" Benjamin C. Clark	65	17
" J. Hopkins Stewart and Michael Dougherty	83	21
Decree	115	29
Petition of appeal	115	29
Appeal allowed	117	30
Appeal bond	118	30
Clerk's certificate	121	31

FERDINAND N. CLARK,
vs.
BENJAMIN C. CLRAK et als. } In equity.

On the 18th day of March, A. D. 1856, the complainant files his bill on oath against the defendants, as follows:

1 To the honorable the judge of the circuit court, within and for the district of New Hampshire, next to be holden at Portsmouth:

Ferdinand N. Clark, of Roxbury, State of Massachusetts, humbly complaining, showeth unto your honorable court, that on the twenty-eighth day of January, A. D. eighteen hundred and forty-three, that your orator filed his petition in the district court of the United States within and for the district of New Hampshire, to be declared a bankrupt; and on the twenty-second day of March, A. D. eighteen hundred and forty-three, your orator was by said district court
2 declared a bankrupt; and on the seventeenth day of December, A. D. eighteen hundred and forty-four, your orator was by said district court decreed a full and perfect discharge of and from all his debts owing by him in his private right and capacity at the time of presenting his petition to be declared a bankrupt. On the twenty-second day of March, A. D. eighteen hundred and forty-three, said district court appointed one John Palmer, of South Hampton, in said State of New Hampshire, assignee. On the fourteenth day of March, A. D. eighteen hundred and forty-five, said district court decreed a license to said John Palmer, assignee as aforesaid, to sell the assets of your orator within six months thereafter, by giving public notice in some newspaper, or by posting up notices; and the said John Palmer, after giving the notice required by said district court, on the ninth day of April, A. D. eighteen hundred and forty-five, sold at public auction all the assets of your orator, the said
3 bankrupt, to R. M. Clark, for the sum of two dollars, and then and there executed to said R. M. Clark a formal and sufficient bill of sale to the said R. M. Clark, conveying to the said R. M. Clark a good and perfect title in and to all the assets sold as aforesaid; and on the tenth day of April, A. D. eighteen hundred and forty-five, your orator purchased of the said R. M. Clark, for a good and valuable consideration, all the assets sold by said assignee as aforesaid, and the said R. M. Clark then and there executed a formal and sufficient bill of sale of said assets to your orator.

And your orator further showeth to this honorable court, that amongst the assets so purchased by him was a certain claim against the republic of Mexico for the seizure of the cargo of the schooner Louisiana on or about September, A. D. eighteen hundred and twenty-five, which claim your orator was awarded by a board of com-
4 missioners duly appointed and authorized to settle the claims of American citizens against the republic of Mexico, under

the treaty of the second day of February, A. D. eighteen hundred and forty-eight, and an act of the American Congress of the third March, eighteen hundred and forty-nine, the sum of eighty-six thousand seven hundred eighty-six dollars and twenty-nine cents, payable from the treasury of the United States on the fifteenth day of May, A. D. eighteen hundred and fifty-one. And your orator further showeth to your honorable court, that one Benjamin C. Clark, of Boston, in the Commonwealth of Massachusetts, in fact then and now a debtor to your orator, did, on the fifteenth day of May, A. D. eighteen hundred and fifty-one, petition by bill the honorable
5 the circuit court of the United States, within and for the District of Columbia, for an injunction directing the Secretary of the United States Treasury not to pay the said award to your orator or his agents, servants, &c., but to retain the same until the further order of said circuit court, claiming to be a creditor of your orator by force and virtue of a certain judgment rendered against your orator on the 24th day of June, A. D. eighteen hundred and forty-two, by the consideration of the justices of the superior court, within and for the city of New York, in the State of New York, and in favor of said Benjamin C. Clark, for the sum of twenty-five thousand four hundred and fifty-three dollars and twenty-eight cents; and your orator further gives your honorable court to be informed that the said judgment was obtained by fraud and collusion, and therefore is void in law, for the reasons and causes your orator will hereafter specifically set
6 forth and allege. And your orator further showeth to this honorable court, that one Charles G. Nazro, now and then copartner of said Benjamin C. Clark, on the nineteenth day of May, eighteen hundred and fifty-one, petitioned the honorable the district court, within and for the district of New Hampsnire, for the appointment of an assignee of the bankrupt estate of your orator instead of John Palmer, whom the said Nazro represented to said district court had deceased, and prayed that one William H. Y. Hackett, or some other person, be appointed assignee as aforesaid, representing at the same time that the said John Palmer had left assets unsold and dues uncollected belonging to your orator's said estate in bank-
7 ruptcy, and that *recent occurrance* had given value to some of the said assets; and thereupon, on the day and year last aforesaid, the said district court decreed that the said William H. Y. Hackett be appointed assignee for the purposes prayed for in the petition of the said Charles G. Nazro, said Nazro's petition having been filed in the clerk's office of the said district court on the nineteenth day of said May. And your orator further says, that said Wm. H. Y. Hackett did, on the second day of June, A. D. eighteen hundred and fifty-one, petition by bill the United States circuit court of the District of Columbia, praying for an injunction directing the Secretary of the Treasury of the United States not to pay the award aforesaid to your orator, or any one else acting under him, and the said Hackett claimed to come in under and be made a party
8 to the bill of the said Benjamin C. Clark, and act in conjunction with the said Benjamin C. Clark in the further proceed-

ings of their said bills then pending in the said circuit court. And your orator prays this honorable court that the said Wm. H. Y. Hackett, assignee as aforesaid, and the said Benjamin C. Clark, and all others that appeared of record and participated in the original proceedings before alluded to and set forth by your orator, may, if necessary to the proper *adjucation* of the same, be made party defendant to this bill. And your orator further showeth to this honorable court, that the said circuit court of the District of Columbia decreed that the amount of the award aforesaid be paid by the Secretary of the Treasury aforesaid to the said Wm. H. Y. Hackett,
9 assignee as aforesaid, to be by him, under the decree and orders of the district court of the district of New Hampshire, distributed to your orator's creditors in bankruptcy. And your orator further says, that he appealed from the judgment of the said circuit court of the District of Columbia to the Supreme Court of the United States, sitting at Washington, in the said District of Columbia, and that such proceedings were had in the said Supreme Court that the judgment of the said circuit court was affirmed. And your orator further showeth to this honorable court, that in accordance with the decree of the said circuit court of the District of Columbia, the said honorable the district court of the district of New Hampshire received from the Secretary of the Treasury of the United States the amount
10 of the said award, less twenty per cent. allowed Major F. T. Lally and James S. Thayer, the agents who prosecuted the said claim against the republic of Mexico before the board of commissioners aforesaid. And your orator further says, that the said district court of New Hampshire, as he believes and has reason to believe, received the amount of said award, and now holds the same in custody, in accordance with the decree of the said circuit court of the District of Columbia. And your orator further says, and gives this honorable court to be informed, that he did not on the twenty-eighth day of January, A. D. eighteen hundred and forty-three, owe the said Benjamin C. Clark and Charles G. Nazro, copartners, nine hundred seventy dollars and twenty-six cents, or any debt whatever. "And that your orator did not at the time of filing his petition to be declared a bankrupt, or at any other time since, owe the said Benjamin C. Clark the amount of the judgment, or any part thereof,
11 set forth and described in the said Benjamin C. Clark's bill, presented to the circuit court of the District of Columbia, but on the contrary, as your orator will hereafter specially charge the claim to prove said judgment was obtained in the name of the said Benjamin C. Clark by fraud and collusion. And your orator says that the said Charles G. Nazro and said Benjamin C. Clark, as copartners, and the said Benjamin C. Clark, individually and privately, were on the said twenty-eighth day of January, A. D. eighteen hundred and forty-three, debtors in a large amount to your orator's estate in bankruptcy; and this your orator will claim the right to prove." And your orator further says, that he denies that the late John Palmer, assignee as aforesaid, left unsold any of the bankrupt assets, or left any dues belonging to said estate uncollected, or left

any of the proceedings in bankruptcy unfinished and pending
12 at the time of his decease ; but, on the contrary, your orator avers that the said John Palmer, assignee as aforesaid, finished, closed, and ended all the business matters and things pertaining to said bankruptcy estate, on the ninth day of April, A. D. eighteen hundred and forty-five. And your orator further showeth that the said Wm. H. Y. Hackett was not authorized by the decree of any court to proceed against the doings of the said John Palmer, assignee in bankruptcy aforesaid. And your orator, in this behalf, avers, that the said Wm. H. Y. Hackett did violate and exceed the authority of the court, and did misrepresent the facts in relation to the proceedings in bankruptcy to the said circuit court of the District of Columbia, and said Supreme Court of the United States, and by which false representation, and by collusion and fraud, both of said courts,
13 not knowing the real facts and proofs in the premises, but supposing they had by said Hackett been truly presented and exhibited to the court, was induced, by reason of said false and fraudulent representation and exhibits, to decree, and did decree, that the amount of said award should be paid to the said Hackett, assignee as aforesaid, and for the purposes aforesaid ; all of which your orator is ready to certify, and will prove in the manner and at the time this honorable court shall direct. "And your orator further says, that when the late John Palmer, assignee as aforesaid, sold the assets aforesaid on the ninth day of April, A. D. eighteen hundred and forty-five, at public auction, that the claim against the republic of Mexico, awarded to your orator as aforesaid, was considered by your orator, and by all persons that had a knowledge of the nature of said claim, worthless and of no value at all, and also so considered by John Palmer ; all of which your orator is ready and will prove as directed by this honorable court, and will also prove that the said
14 claim had been abandoned from September, A. D. eighteen hundred and twenty-five, until February, A. D. eighteen hundred and forty-two, together with the said claim for the schooner Louisiana, which was owned in part or whole by her master, Michael Dougherty. And your orator further says he can and will prove that the agents, who prosecuted other similar claims, declared to your orator before the said claim was awarded, and long time after the said claim had been sold to said R. M. Clark, that all similar claims had been rejected by the board of commissioners who were authorized to settle such claims. And your orator further says he can and will prove to the satisfaction of this honorable court, that the claim for the seizure of the cargo of the schooner Louisiana aforesaid against the republic of Mexico, was not only considered valueless by all well informed judges, but its recovery impossible. And your orator further
15 showeth, and is ready to prove to the satisfaction of this honorable court, that but for an *occurrance* which happened favorable to the allowance of said claim many years after said claim was sold by the late John Palmer, assignee, to R. M. Clark aforesaid, and but for the great and skillful effort made by your orator, the said claim would and could not have been allowed by the board of com-

missioners aforesaid; and in consideration thereof, and for the skill and services of your orator, and of the large amounts of time and money he spent in and about the matter, and of the services of his friends, whose aid and efficient management was of great service and value in the premises, and for which service they have not as yet received any compensation, your orator claims and maintains that he is justly and equitably entitled to the whole amount of said award now remaining in the custody of the said district court for the district of New Hampshire, together with interest and damages thereon. And your orator further says, that the said Ferdinand Clark, men-
16 tioned in the bills of said Benjamin C. Clark and William H. Y. Hackett, and in the bankrupt proceedings before mentioned, and the said Ferdinand W. Clark mentioned in this bill, are one and the same person. And your orator further showeth, and gives this honorable court to be informed touching the judgment aforesaid, purporting to be in favor of the said Benjamin C. Clark, and rendered by the consideration of the superior court of the city of New York, in the State of New York, and dated June twenty-fourth, A. D. eighteen hundred and forty-two, for the sum of, in damages and costs herein before set forth, and in that behalf more specifically and distinctly articulated, sets forth and charges that such judgment was obtained through and by fraud and collusion—that is to say, your orator, after the commencement of said suit, and a reasonable time before the same was reached for trial, retained and employed one Joseph Hopkins Stewart, of the city of New York, then
17 attorney and counsellor-at-law, and duly licensed to practice in said superior court, and paid the said Stewart his reasonable fees to attend to, manage, and defend the said suit for and in behalf of your orator; and your orator then and there fully and plainly instructed said Stewart in the nature and defence of said suit, and directed him in the conduct and management thereof as follows, to wit: *First*, that the foundation of said suit was groundless and fictitious; that no good and sufficient cause of action existed. *Second*, that if any cause of action was set forth in said case, or if any cause of action ever existed, the same had been cancelled and annulled by payment and satisfaction in full, so that your orator was not then, nor has ever been since, indebted to the said Benjamin C. Clark, but, on the contrary, the said Benjamin C. Clark was then largely indebted to your orator; and had the said Joseph Hopkins
18 Stewart been faithful and true to your orator's interest, the fact of the said Benjamin C. Clark's indebtedness to your orator would have been made to appear in the trial of said case. *Third*, your orator further says, that he put into the hands and possession of the said Joseph Hopkins Stewart evidences of indebtedness of said Benjamin C. Clark, to wit: Four certain promissory notes of hand, signed by one John Clark, of Boston, State of Massachusetts, amounting to nine thousand seven hundred and sixty-five dollars and forty-one cents, and interest thereon to the fourteenth day of May, A. D. eighteen hundred and fifty-one, to ten thousand and forty-five dollars and fifty-five cents; total amount nineteen thousand eight hundred

and ten dollars and ninety-six cents, which amount was then and is still due your orator and unpaid; and for the final payment of said notes, together with interest to your orator, the said Benjamin C.
19 Clark was legally liable, and this the said Joseph Hopkins Stewart well knew, and was by your orator instructed and directed to plead and prove the same in said case as payment pro tanto, but the said Stewart, well knowing the premises, designedly and fraudulently neglected so to do. "And your orator further says, that he made known to and instructed the said Joseph Hopkins Stewart that the said Benjamin C. Clark had and received from your orator, and was legally responsible and debtor to your orator for the aforesaid notes, and the following moneys, effects, and sundries had and received by said Benjamin C. Clark of your orator at and before the time of the rendition of the said superior court judgment aforesaid, hereinafter stated, and which the said Joseph Hopkins Stewart agreed to exhibit in the defence in the said cause then pending in the said superior court, in New York city, in your orator's behalf, and which exhibit and defence said Joseph Hopkins
20 Stewart failed and neglected attending to, to wit: your orator exhibits herewith, marked (C,) his statement of moneys, effects, and sundries said Benjamin C. Clark had and received of your orator up to the fourteenth day of May, A. D. one thousand eight hundred and fifty-one, amounting to two hundred and fifty thousand two hundred and five dollars and four cents; and which said amount of said Benjamin C. Clark's indebtedness to your orator, on and before the rendition of said judgment, is to be added thereto, the sum of about three thousand dollars, and interest thereon from the twenty-eighth day of December, A. D. eighteen hundred and thirty-seven, on the last named sum, amounting to twenty-four hundred and eight dollars and fifty cents, on the fourteenth day of May, A. D. one thousand eight hundred and fifty-one, and principal to five thousand and four hundred and eight dollars and fifty cents, money last named, and had received, by the said Benjamin C. Clark, of one John
21 Preston, of Boston, in the State of Massachusetts, and which the said Benjamin C. Clark specifically agreed to pay, for your orator's account and benefit, on the twenty-eighth day of December, A. D. one thousand eight hundred and thirty-seven, but failed *to do so;* and said Benjamin C. Clark had not, on the twenty-fifth day of January, A. D. eighteen hundred and forty-three, paid or secured the payment of said last mentioned sum of three thousand dollars and interest thereon, amounting, total, to five thousand four hundred and eight dollars and fifty cents, money had and received from said John Preston for and on account of your orator, as your orator is informed and believes; and the aforesaid moneys, effects, and sundries said Benjamin C. Clark had and received of your orator on and before the twenty-eighth day of January, A. D. eighteen hundred and forty-three, amounts to two hundred and fifty-five thousand six hundred and thirteen dollars and fifty-four cents, including interest to
22 the fourteenth day of May, A. D. one thousand eight hundred and fifty-one, and which transaction and indebtedness of said

Benjamin C. Clark to your orator was communicated to the said Joseph Hopkins Stewart before the rendition of the judgment aforesaid. And your orator further says, that he instructed said Joseph Hopkins Stewart and directed him to plead and prove the same in the trial of the said case in the superior court of New York city aforesaid, said Joseph Hopkins Stewart, well knowing the premises, fraudulently and wilfully neglected so to do. "And your orator further says, that notwithstanding the said Joseph Hopkins Stewart was as to the several matters of defence thus specifically and fully instructed and directed in the premises, and that said Stewart well knew that your orator was always ready and willing to aid and assist the said Stewart in the said defence when he (the said Stewart) should call on him for aid and assistance, yet the said Stewart, well knowing all and singular the premises, and notwithstanding he was em-
23 ployed and paid your orator, yet the said Stewart fraudulently colluded and conspired with the said Benjamin C. Clark and the counsel of said Benjamin C. Clark and one John Clark, a brother of Benjamin C. Clark aforesaid, and thereby designedly, fraudulently, wilfully, and maliciously abandoned the interest of your orator and so managed and conducted said suit as that your orator was defaulted and judgment rendered as aforesaid greatly to the damage and injustice of your orator. "And your orator further says, that he was entirely ignorant of the fraud and collusion alleged as aforesaid until after the final rendition of the judgment aforesaid, and too late to obtain his just and legal rights and get a new hearing in the said case before the said superior court of New York city. And your orator further says, and offers as an apology and a reason, that your orator did not plead the several matters and things herein before set forth and alleged relating to the fraudulent and collusive proceedings in obtaining the judgment rendered by the said superior court
24 of New York city aforesaid, in answer to the bill of the said Benjamin C. Clark and William H. Y. Hackett, filed and heard by the said circuit court of the United States for the District of Columbia, that your orator was instructed by his *council* engaged in said case aforesaid of the said circuit court, and that he verily believed that the bankrupt proceedings and the acts of the said John Palmer, assignee aforesaid, and the bill of sale executed by the said John Palmer as proof herewith, exhibited, marked (A,) conveying the title to the Mexican claim aforesaid, and your orator's discharge in bankruptcy, would form and make a perfect and complete bar to the matter and things by the said Benjamin C. Clark and said William H. Y. Hackett in their respective bills pleaded, so that, whether this judgment aforesaid was valid or not, or whether it existed or not, it was of no consequence to your orator, as his discharge would be a good and sufficient and complete bar to the same.
25 "And your orator further showeth and gives this honorable court to be informed, that about the time the award aforesaid was made by the said board of commissioners aforesaid, awarding your orator the amount of his claim against the republic of Mexico, one Charles H. Dougherty, of the city of New York, made claim, by

letter of the twenty-eighth day of April, A. D. eighteen hundred and fifty-one, marked (B,) herewith annexed, on your orator for ten per cent. on the amount of the said award, which per cent. amounting to eight thousand six hundred and seventy-eight dollars and ninety-two cents, and this amount the said Charles H. Dougherty claimed that he was entitled to for services which he (the said Charles H. Dougherty) had rendered your orator in getting the said Mexican claim allowed. But your orator thought otherwise, and was not aware that said Chas. H. Dougherty had rendered any benefit
26 and services to your orator in the matter, or was ever employed by your orator so to do, and therefore your orator justly refused to allow said Chas. H. Dougherty his pretended claim, or any part thereof. And your orator further says, that one Michael Dougherty, of the city of New York, on or about the first day of May, or thereabout, at Boston, A. D. eighteen hundred and fifty-one, claimed one quarter part of said award in addition to his son, Chas. H. Dougherty aforesaid, ten per cent., and said if your orator did not comply with their demand aforesaid, he (said Michael) would tie it all up in Washington city, District of Columbia, and that your orator would not get any part of said award. "And your orator further says, as he is informed and verily believes, solely for the reason that your orator would not allow said Chas. H. Dougherty and said Michael Dougherty claim aforesaid, that then and there he (the said Chas. H. Dougherty) and said Michael Dougherty, the father of said Chas. H. Dougherty, and one Joseph Hopkins Stewart, attor-
27 ney-at-law, all of the city of New York, and one John L. Hayes, of the city of Washington, in the District of Columbia, attorney-at-law, and one William H. Y. Hackett, of Portsmouth, in the State of New Hampshire, maliciously intending and combining to cheat and defraud your orator out of his just and equitable dues and rights, and deprive him of the benefit of said award, and to this end conspired and confederated together, and, as a means for the final consummation of their said designs, contrived, concocted, and got up a groundless and fraudulent petition in the name of said Benjamin C. Clark and said Benjamin C. Clark & Co., to the district court of the United States for the district of New Hampshire, and by fraud and misrepresentation induced said district court of the district of New Hampshire to appoint an assignee, and said district court did appoint said Wm. H. Y. Hackett assignee of your orator's estate in
28 bankruptcy, in place of one John Palmer aforesaid, deceased; and, as a further means of consummating their said designs, the said conspirators combined, concocted, got up, and commenced, in the name of the said Benjamin C. Clark, another fraudulent petition by way of bill, and still another fraudulent petition by way of bill, in the name of said Wm. H. Y. Hackett, assignee, and presented the same in the month of June, A. D. eighteen hundred and fifty-one, to the circuit court of the United States for the District of Columbia, praying for an injunction on the Secretary of the United States Treasury, directing him not to pay said award to your orator, or any one else, until the further order of said circuit court; and further

praying that the proceedings touching your orator's estate in bankruptcy be open for the proof of debts in bankruptcy, and that the amount of said award be ordered to be paid to said Wm. H. Y. Hackett, assignee aforesaid, and by him, under the direction
29 of said district court for the district of New Hampshire, to be distributed to your orator's creditors in bankruptcy pro rata. And your orator further says, as a more sure and effectual means of coming at and consummating the said purposes and designs of the said conspirators, one of them, one John L. Hayes, attorney-at-law, duly licensed to practice in the circuit court of the United States, and acting in pursuance of the previous plans of all said conspirators, offered his professional services and skill to your orator to act for him and his interest in the management and conduct of the defence to the bills of the said Benjamin C. Clark and said William H. Y. Hackett in said circuit court for the District of Columbia; and, your orator being ignorant of the real designs and purpose of said John L. Hayes and said conspirators, but confiding in his skill and integrity, did retain and employ the said Hayes, and confided to and charged him with the whole duty of getting up and preparing the de-
30 fence to said bills in said circuit court; but your orator says, as he is informed and verily believes, that during the whole time said Hayes was pretending to prepare and to act for your orator's interest in the defence of said bills, the said Hayes was untrue to your orator's interest, and so aided and assisted the adverse party, by keeping out, contrary to the instructions of your orator, certain material evidence and matters of defence, that said circuit court decreed the case against your orator, and according to the prayers of the said Benjamin C. Clark and said William H. Y. Hackett. And your orator further says, that to be more specific to this honorable court, more clearly and conclusively the unfaithfulness and fraudulent acts of the said Hayes, your orator here avers that he put into the hands and possession of the said Hayes certain evidences of indebtedness of the said Benjamin C. Clark to your orator, which indebtedness had accrued since the rendition by the superior court of the pre-
31 tended judgment before set forth, to wit: that the said Benjamin C. Clark was owing your orator for the collection of two certain valid claims, amounting to upwards of thirty-nine thousand seven hundred and seventy-four dollars and forty cents, principal and interest, up to the fourteenth day of May, A. D. eighteen hundred and fifty-one, to your orator's use some time in the year eighteen hundred and forty-two; also about six thousand dollars of the last named sum had and received to your orator's use some time in the year last mentioned; and also another sum of money, particularly specified in a statement herein before stated, had and received by the said Benjamin C. Clark to your orator's use in the year eighteen hundred and forty-seven, all of which said amount said Benjamin C. Clark was legally liable to account for to your orator. And your orator says that he in due season distinctly instructed and directed said Hayes to file and present the same in the trial of said
32 bills, but said Hayes, well knowing the premises, fraudulently

and designedly neglected so to do. And your orator says further, that he was ignorant of the fraudulent acts and conduct of the said Charles H. Dougherty, Michael Dougherty, Joseph Hopkins Stewart, William H. Y. Hackett, and John L. Hayes, herein before set forth, until after the final decree of the said United States circuit court, District of Columbia aforesaid, and too late to get redress in the trial of the said case. And your orator further says, that as to the several allegations, matters, and things herein set forth he is without adequate remedy in law; he therefore prays that the same may be inquired into in equity by this honorable court, and to this end, reserving his rights to amend his bill if necessary, your orator prays that a subpœna be issued and served on the said Benjamin C. Clark, of Boston, in the Commonwealth of Massachusetts,
33 and John Clark, of said Boston, and Commonwealth, William H. Y. Hackett, of Portsmouth, in the State of New Hampshire, John L. Hayes, of Washington city, in the District of Columbia, Joseph Hopkins Stewart, Michael Dougherty, and Charles H. Dougherty, New York city, commanding them to appear and answer the several allegations and matters of this bill as fully as if they were here again repeated.

And your orator prays right and justice, and that the decree made upon the bills of the said Benjamin C. Clark and Wm. H. Y. Hackett, by the circuit court of the United States for the District of Columbia, and affirmed by the Supreme Court of the United States, be
34 reversed, and that the district court of the United States for the district of New Hampshire be ordered and directed to pay the amount of said award, less twenty per cent. paid to the said Lally and said Thayer aforesaid, together with lawful interest and damages thereon to your orator, and that he be adjudged his reasonable costs.

FERDINAND N. CLARK.
P. S. WHEELOCK, *Solicitor.*

CIRCUIT COURT U. S., *Mass. district, ss:*

March 15th, 1856. Then personally appeared the above named Ferdinand N. Clark, and made solemn oath that he has carefully read the above bill, and understands the contents thereof; and that
35 all the matters and things therein stated as of his own knowledge are true, and that as to all other matters therein contained he believes them to be true.

Before me.

H. W. FULLER, *Clerk.*

36 And the said John Clark reserving any and all right of exception to said bill, for answer to so much thereof as relates to him, and to which he is advised he is bound to make answer upon oath, says, that it is true that at about the time set forth in said bill, the said complainant had claims against this defendant to about the amount set forth in his said bill. But it is not true that said Benjamin C. Clark was legally liable for the first payment of said claim or any

part thereof to said complaint. And this defendant further answering, says, that said claim of said complainant against this defendant was long since adjusted, and does not now subsist, and for a long time past has not subsisted against this defendant. And this defendant says, that said complainant has not any claim against this
38 defendant in his behalf or to his knowledge. And he especially denies that he colluded or conspired with said Benjamin C. Clark and said Joseph Hopkins Stewart, or either of them, for said Stewart to abandon said complainant's interest in said suit, or for a default of said complainant's said suit.

And he denies all combination and confederacy and conspiracy charged against him in said bill of complaint; without that, that any other matter or thing in said complaint contained, and charged against this defendant, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowledge or in the belief of this defandant. All which matters and things this defendant is ready to aver, prove, and maintain, as this
39 honorable court shall direct; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

40 And the said William H. Y. Hackett, reserving unto himself the right to except to the defects and informalities of said bill of complaint in answering to such parts thereof as he is bound to answer upon oath, says, that he has been informed, and believes it to be true, that on or about the 28th day of January, A. D. 1843,
41 said complainant filed his petition in the court and for the purpose set forth in said bill, and that such proceedings were had in said court, that said complainant, on the 22d day of March, A. D. 1843, was declared a bankrupt; and on the 17th day of December, A. D. 1844, said complainant was by said district court decreed a full discharge of and from all his debts owing by him in his private right and capacity at the time of presenting his said petition to be declared a bankrupt. That on the 22d day of March, A. D. 1843, said district court appointed one John Palmer, of South Hampton, in said State of New Hampshire, assignee. That among the assets of said complainant was a claim against the republic of Mexico. On the fourteenth day of March, A. D. 1845, said district court decreed a license to said John Palmer, assignee as aforesaid, to sell
42 the assets of said complainant within six months thereafter, by giving public notice in some newspaper, or by posting up notices. And that said John Palmer, on or about the 9th day of April, A. D. 1845, attempted to sell at public auction all the assets of said complainant to one R. M. Clark, for the sum of two dollars; but this defendant has never been informed, save by said bill, that said Palmer gave the notice required, and he believes said Palmer did not give said notice. This defendant has been informed, and believes it to be true, that said John Palmer executed to said R. M. Clark, a bill of sale purporting to convey to her said complainant's said assets. But this defendant has been informed, and believes it to be true, that said bill of sale was and is invalid and void.

43 And this defendant further answering, says that he has been informed, and believes it to be true, that said R. M. Clark, about the 10th of April, A. D. 1845, attempted to convey said assets to said complainant; but this defendant has been informed and believes the said sale was and is invalid and void.

And this defendant further answering, says that among the assets so attempted to be purchased by said complainant, was said certain claim against the republic of Mexico, for which said complainant was awarded by the board of commissioners duly appointed and authorized to settle the claim of American citizens against the republic of Mexico, under the treaty of the second day of February, A. D. 1848, and an act of the American Congress of the third of March, A. D.
44 1849, the sum of eighty-six thousand seven hundred and eighty-six dollars and twenty-nine cents, payable from the treasury of the United States, on the 15th day of May A. D. 1851. And this defendant further answering, says that he has been informed, and believes, that said Benjamin C. Clark, of said Boston, one of the creditors of said complainant, did, on or about the 15th day of May, A. D. 1851, in a bill in equity in the circuit court in the United States, within and for the District of Columbia, among other things, pray for an injunction, directing the Secretary of the Treasury of the United States not to pay said award to said complainant, his agents or servants, but to retain the same until the further order of said court; and that said Benjamin C. Clark claimed to be a creditor of said complainant by force and virtue of the said judgment
45 named and described in and by said bill of complaint.

And this defendant further answering, says that he does not know, and has not been informed, save by said bill, how said judgment was obtained, or whether the same was or is void; but he believes said judgment to have been properly and legally obtained, and for a bona fide debt, in the regular and ordinary course of judicial proceeding, and that said judgment still remains unreversed and in full force.

And this defendant further says, that he has been informed, and believes, that said Charles G. Nazro now is, and then was, a copartner of said Benjamin C. Clark, and that the said Charles G. Nazro, on or about the nineteenth day of May, A. D. 1851, petitioned the
46 honorable district court, within and for the district of New Hampshire, for the appointment of this defendant, or some other suitable person, as asignee of said complainant, instead of said John Palmer, deceased, and for the reasons and purposes set forth in said bill of complaint. And this defendant admits that he was, on or about said nineteenth day of May, 1851, by said district court, appointed assignee, for the purposes and in the manner set forth in said complainant's bill.

And this defendant admits that on the second day of June, A. D. 1851, he did petition in the court for the purpose and in the manner set forth in said bill. And he further admits that said circuit court of the District of Columbia decreed that the amount of said
47 award should be paid by the Secretary of the Treasury to this defendant, and in accordance with the prayer and purpose set

forth in said bill. And that said complainant appealed from said judgment to the Supreme Court of the United States, sitting at Washington in said District of Columbia, and that such proceedings were had in said Supreme Court that the said judgment of said circuit court was affirmed; that the district court for the district of New Hampshire has received the amount of said award as set forth in said bill, less the deduction set forth, and still retains the same. And this defendant does not know, and has not been informed, whether on said 28th day of January, A. D. 1843, said complainant was or not
48 indebted to said Benjamin C. Clark and Charles G. Nazro, in the sum set forth, or any other sum, but he believes said complainant was so indebted. And this defendant has been informed, and believes, that at the time of filing said petition by said complainant, on the 28th day of January, 1843, and from that time until this date, that said complainant has been, and now is, indebted to said Benjamin C. Clark in a large amount, and for the amount of said judgment. And this defendant has never been informed, save by said bill, and he does not know or believe that said Benjamin C. Clark and Charles G. Nazro, one or either of them, as copartners or individuals, were, on said 28th day of January, 1843, debtor or debtors to a large amount, or to any amount, to the estate of said complainant in bankruptcy, but he believes that they were not so indebted.

49 And he further says, that said John Palmer, assignee as aforesaid, at the time of his death, left assets of said complainant's said estate in bankruptcy unsold or uncollected, and did not in his lifetime close up the affairs of said estate.

And this defendant further answering, says that by reason of said John Palmer's dying without fulfilling his duty as assignee of said complainant's estate in bankruptcy, and the appointment of this defendant as assignee instead of said Palmer, this defendant had authority, and it was his duty to institute and carry on the proceedings before named. And this defendant denies that he made any representations, or exhibited any proofs, except such as were and are true, or that said courts, either one or both of them, decided
50 upon said matter without knowing the facts duly proved and legally established. And this defendant does not know, and has not been informed, whether said complainant, or all or any persons who had a knowledge of the nature of said claim against the republic of Mexico, on the 9th of April, A. D. 1845, did or not consider said claim as worthless, and of no value at all, or how it was considered by said John Palmer, or whether said claim was abandoned from September, A. D. 1825, until February, 1842, together with said claim for the schooner Louisiana, or whether said schooner was owned in part by her master, Michael Dougherty. Nor does this defendant know, or has he been informed, whether said complainant had the information in regard to rejecting claims like this set forth in
51 said bill, or whether the opinions in regard to said claim were entertained as set forth in said bill. Nor does he know how much an occurrence happening after said pretended sale to said R. M. Clark, or the skilful efforts of said complainant and his friends

may have contributed to the allowance of said claim, or whether he or they have or not been paid therefor. But he denies that said complainant is legally or equitably entitled to said award or any part of it.

And he has been informed and believes that the Ferdinand Clark mentioned in this defendant's and Benjamin C. Clark's bill, and Ferdinand N. Clark, the complainant in the bill in this suit, are one and the same person.

52 And this defendant further answering, says that he does not know, and has not been informed, save by said bill, whether said Benjamin C. Clark, at the time in the court, and in the manner and by the means set forth in said bill, recovered judgment against said complainant for the sum of twenty-five thousand four hundred and fifty-three dollars and twenty-eight cents, but he has been informed, and believes, that said Benjamin C. Clark at some time, and in some court in New York, recovered judgment against said complainant for a large sum of money, but he has not been informed for what amount. He believes said judgment to have been founded on a bona fide debt, and to have been recovered in the ordinary and regular course of judicial proceedings, and not by fraud or collusion.

53 He has not been informed, and does not know, whether said complainant at the time, for the purpose, and in the manner set forth in said bill, retained or employed or paid one Joseph Hopkins Stewart, of the city of New York, an attorney and counsellor at law, to defend the suit of said Benjamin C. Clark against said complainant; or whether said complainant then and there fully and plainly instructed said Stewart in the nature and defence of said suit; or whether he directed said Stewart in the conduct and management of said suit in the manner and to the effect set forth in said bill; or whether the complainant had the defences and proofs set forth therein; or whether said Benjamin C. Clark was legally responsible and debtor to said complainant for the moneys set forth in the exhibit marked C, annexed to said bill, amounting to two

54 hundred and fifty thousand two hundred and five dollars, and interest thereon from the 28th day of December, A. D. 1837; or for the sum in said bill alleged to have been received by said Benjamin C. Clark of one John Preston, on the account of said complainant; or whether said Benjamin C. Clark specifically agreed to pay for said complainant's account and benefit said amount or any other amount of money; or whether said Benjamin C. Clark had or not, on the twenty-fifth of January, 1843, paid or secured the payment of said last mentioned sum, had and received from said John Preston; or whether said Benjamin C. Clark has or not any, and if any, what, or at what time, accounted for said sum of two hundred and fifty-five thousand six hundred and thirteen and fifty-four cents; or

55 whether said transactions and indebtedness, of said Benjamin C. Clark, were or were not communicated before the rendition of said judgment; or whether said complainant instructed said Stewart in the manner and to the effect set forth in the said bill; or whether said Stewart fraudulently or wilfully neglected to obey said

instructions; or whether said Stewart fraudulently colluded or conspired with said Benjamin C. Clark, and the counsel of said Benjamin C. Clark and said John Clark, and thereby designedly, fraudulently, wilfully, and maliciously abandoned the interest of said complainant, or so managed and conducted said suit as that said complainant was defaulted; or whether said complainant was ignor-
56 ant of said fraud and collusion until it was to late to get his just rights and a new hearing in said case before said superior court of New York; or whether the reason that said complainant did not receive said several matters in answer to this defendant and said Benjamin C. Clark's respective bills in the circuit court of the United States for the District of Columbia, is truly set forth in said bill or not, but he believes each and all said charges to be without any foundation in truth or justice. And this defendant says, that he does not know, and has not been informed, whether said complainant was instructed by his counsel in said case in the manner and to the effect set forth in said bill of complaint. And this defendant says, that he does not know said Charles H. Dougherty, or said Michael Dougherty, nor had he ever heard of them, or either of them, until the
57 filing of the bill in this suit, and does not know, and has not been informed, whether they, or either of them, made the claim or threat set forth in said bill; or whether they, with said Stewart, whom this defendant does not know, and said John L. Hayes, for the reason and the purpose set forth in said bill, got up any petition to the said district court of New Hampshire; but he believes that no such petition was gotten up by said Dougherty, Stewart, and Hayes, or any or either of them, or any one else.

And this defendant denies that he ever had any correspondence, connection, or arrangement with said Dougherty, Stewart, Hayes, or with any other person or persons, except said Benjamin C. Clark and Charles G. Nazro, and their counsel, Charles G. Nazro and Christopher G. Ripley, in regard to the said petition to the district
58 court of the United States for the district of New Hampshire, for the appointment of this defendant, or any other person, as assignee of said complainant's estate in bankruptcy, in place of said John Palmer.

And he further says, that when he was appointed assignee of the estate of said complainant in bankruptcy, he was informed that said Benjamin C. Clark, as one of the creditors of said complainant, had commenced his said bill in equity against said complainant in the circuit court of the United States for the District of Columbia, and had, in pursuance of an act of Congress to that effect, caused the Secretary of the Treasury of the United States to be enjoined not to pay out said fund to said complainant; and thereupon this defendant, as was his duty as said assignee, by petition in the nature of a
59 bill in equity in the same circuit court, prayed that said award might be paid to him as assignee for the benefit of all the creditors of said complainant.

And this defendant further answering, says that he does not know how, or under what inducements, said John L. Hayes was returned

[retained] by said complainant as his counsel in said suit; but he has been informed, and believes, that said Hayes, together with Alexander H. Lawrence, Rufus Choate, and J. M. Bell, were of counsel for said complainant in this defendant's and the said B. C. Clark's said suit, all of whom, as far as this defendant is informed and believes, conducted said defence with diligence, fidelity, and ability. This defendant has reason to believe, and does believe, that said John L. Hayes engaged in said defence with no purpose other than for his reasonable and proper fees, to aid by his professional services
60 in protecting the rights and subserving the interests of said complainant, and, so far as this defendant is informed and believes, said John L. Hayes faithfully performed his duty as the attorney and counsellor of said complainant. And this defendant further answering, denies all and singular the charges in the various parts of said bill of said complainant, of combining, conspiring, or confederating with said Hayes, or with any other of said complainant's attorneys, or with any other person or persons named or not named in said complainant's said bill, to cheat, or defraud, or injure, or in any way to affect said complainant or said suit, or for any purpose regarding said complainant, or any or either of his suits; nor has he been informed, or does he believe, that said Benjamin C. Clark, John Clark, John L. Hayes, Charles H. Dougherty, Michael
61 Dougherty, Joseph Hopkins Stewart, Charles G. Nazro, or any or either of them, ever conspired or confederated, or combined together, or with any other person or persons, to cheat, defraud, or otherwise to injure said complainant; but, on the contrary, so far as this defendant has been informed, and believes, said Hayes and Stewart have diligently, faithfully, and ably discharged their respective duties to said complainant; and that all the other persons named in said bill have, in a proper and legal manner, instituted and carried on such proceedings as were appropriate to protect their respective rights against said complainant, or to perform their respective duties in relation to said complainant's estate in bankruptcy.

And this defendant further answering, denies that there was an fraudulent petition to said district court as set forth in sa
62 bill; but he admits that on or about the 15th day of M A. D. 1851, a portion of the creditors of said complainant, petition, represented to the judge of the United States district c for the district of New Hampshire, that said John Palmer, assig of said complainant's estate in bankruptcy, has deceased with closing the affairs of said estate, and that it was necessary to appo an assignee to complete the business which said Palmer had le unfinished, and they recommended that this defendant, or some other suitable person, should be appointed; whereupon said judge appointed this defendant as said assignee, who thereupon, not in pursuance of any combination, but in fulfilment of his duty as assignee, instituted the petition by way of bill, at the time, and in the court, and to the purport set forth by said complainant, except that
63 there is no prayer in said petition that said complainant's

estate in bankruptcy might be opened for the proof of debts in bankruptcy; and such proceedings were had thereon, and in said circuit court, and in said Supreme Court of the United States, and such judgment and decrees were rendered as are set forth in said bill of complaint.

And he denies all and all manner of combination and confederacy charged against him in said bill of complaint, without that any other matter or thing in the said bill of complaint contained and alleged against this defendant, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true, to his knowledge or belief; all which matters and things this defendant is ready to aver, prove, and maintain as this honorable court shall direct; and he prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

65 And the said Benjamin C. Clark, reserving unto himself the right to except to the defects and informalities of said bill of complaint, in answering such parts thereof as he is advised that

66 he is bound to answer upon oath, says, that he has been informed, and believes, that said Ferdinand N. Clark, at the time, and to the court, and for the purpose set forth in said bill, made his said petition, and that such proceedings were then from time to time had, and such decrees made upon the subject matter of said petition, and in said district court, as is set forth in said bill. That said John Palmer, assignee, obtained the license and undertook to make the sale of the assets of said complainant set forth in said bill, and that among assets so attempted to be sold was a certain claim against the republic of Mexico. But this defendant has been informed, and believes, that said pretended sale was invalid and void.

This defendant has been informed, and believes it to be true,

67 that said complainant obtained for said claim, against the republic of Mexico, an award by the board, and to the amount, and payable at the time set forth in said bill; but he denies that he now is, or on the 28th of January, A. D. 1843, was, or since that time has been, indebted to said complainant in any way, directly or indirectly, to any amount. But, on the contrary, that at this time, and in said 28th day of January, A. D. 1843, and ever since that time, said complainant was and is indebted to this defendant in a large sum. But this defendant admits, that on the 15th day of May, A. D. 1851, he petitioned by bill the circuit court of the United States within and for the District of Columbia, for an injunction directing the Secretary of the Treasury of the United States not to pay said

68 award to said complainant, his agents, or servants, but to retain the same until the further order of said court; that he claimed to be and was a creditor of said complainant for the amount of twenty-five thousand four hundred and fifty-three dollars twenty-eight cents, for a judgment recovered at the time, and in the court, set forth in said bill. And this defendant denies that said judgment was obtained by fraud or collusion, and, without waving his right to except to this irregular mode of impeaching said judgment, he says that said judgment was recovered in the said court of New York

against said complainant, who was then and there domiciled in said city of New York, in the ordinary and regular course of judicial proceedings, and was founded upon a bail-bond which this
69 defendant, at the request of said complainant, signed for said complainant when under arrest, and which said bond said complainant forfeited, and, having absconded from this country, this defendant was compelled to pay, and did pay to a large amount, to wit, to the amount, with interests and costs, of said judgment, which said judgment has never been reversed or satisfied. And this defendant says, that it is true that said Charles G. Nazro now is, and on the 19th of May, A. D. 1851, was, a copartner of this defendant, and that said Nazro at the time, for the purpose, and to the effect set forth in said bill, did petition said district court of the United States for the district of New Hampshire, and that thereupon said William H. Y. Hackett was appointed assignee of said complainant's estate
70 at the time alleged; and on the 2d day of June, A. D. 1851, as said assignee, made his petition by bill to the said circuit court for the purpose, in the mode, and to the effect set forth in said bill.

And this defendant has been informed, and believes, that such proceedings were had in, and such decree made by, and such appeal taken from said circuit court of the United States as are set forth in said bill, and that said Supreme* there afterwards affirmed said judgment, and that said award, less the alleged deductions, were paid over to said district court of New Hampshire.

And this defendant says, that it is not true that said complainant did not, on said 28th day of January, A. D. 1843, owe this defendant and said Charles G. Nazro, copartners, nine hundred and seventy dollars and twenty-six cents, or any debt whatever; but
71 he says that said complainant at said time owed this defendant and said Nazro, and ever since has owed, and now owes them, about said sum of nine hundred and seventy dollars and twenty-six cents, with interest thereon. And he further says, that at the time when said complainant alleges he filed his petition to be declared a bankrupt, and ever since that time, said complainant has owed, and now owes this defendant, more than twenty-five thousand dollars, and that said judgment was not obtained by fraud and collusion, but was obtained in the ordinary and regular course of judicial proceedings, and was founded on a bona fide debt for the full amount as herein before answered. And he further says, that neither this defendant, with said Nazro, or either of them, individually or otherwise,
72 were, on said 28th day of January, A. D. 1843, or at any time since, indebted to said complainant's estate in bankruptcy to a large amount, or to any amount.

And this defendant says, that said John Palmer, assignee as aforesaid, at the time of his death, left unsold and uncollected assets and effects of said complainant's estate in bankruptcy, and the affairs of said estate unfinished. And this defendant says, that he has been informed, and believed, that said William H. Y. Hackett, as assignee, was authorized to proceed in the premises, and that it was said

Hackett's duty to proceed to close up said estate in bankruptcy, and, so far as this defendant has been informed, and believes, said Hackett has, within the scope of his legal authority, faithfully fulfilled
73 his duty as assignee. And this defendant denies that said Hackett has in any respect transcended his authority or misrepresented the facts in relation to said matter, or that said Hackett concealed from or misrepresented, to any or either of the courts having jurisdiction of said matter, any fact in regard to said subject or suit.

And this defendant says, that when said John Palmer, as assignee, undertook, on the 19th day of April, A. D. 1845, to sell the assets aforesaid, he does not know how said complainant, and all persons having knowledge of the nature of said claim, considered said claim against said republic of Mexico; but this defendant has been informed, and believes, that said complainant, at and before said pretended sale, and at the time of filing his said petition to be declared a bankrupt, was prosecuting said claim against republic of Mexico, in
74 the confidence that it was good, and would be ultimately allowed and paid; and that said complainant's proceedings in bankruptcy, and in prosecuting said claim against said republic of Mexico, was intended to defraud the creditors of said complainant, including this defendant and said Nazro; nor has he been informed, nor does he know, how said John Palmer, assignee, considered said claim, nor whether said claim was abandoned from September, A. D. 1825, until February, A. D. 1842; nor does he know what said complainant can prove in regard to the rejection of similar claims; nor does he know how much a recent occurrence, and the great and skilful efforts of said complainant may have contributed to the allowance of said claim; but he denies that said complainant is justly and equitably entitled to the whole or any part of said award.
75 He believes it to be true, that the Ferdinand Clark mentioned by this defendant, and by said William H. Y. Hackett, in their said respective bills, and in said proceedings in bankruptcy, and the Ferdinand N. Clark, who brings this suit, are one and the same person. And this defendant says, that said judgment recovered by this defendant against said complainant in the supreme court of the city of New York, for said sum of twenty-five thousand five hundred and fifty-three dollars and twenty-eight cents, was not obtained by or through fraud or collusion, but was obtained for the good and valid cause of action, and received in the ordinary and regular course of judicial proceeding; but this defendant does not know, and has not been informed, whether said complainant at any time, and if any, at what time, returned or employed said Stewart, an attorney
76 and counsellor-at-law, or whether he paid said Stewart his reasonable fees in the manner and for the purpose set forth in said bill, or whether or how said complainant instructed said Stewart as his attorney; but he does know, and says, that said alleged instructions, all and singular, and said several alleged grounds of defence and set-off, were and are entirely unfounded in fact and truth, and were, as this defendant believes and alleges, interposed in said suit for the purpose of delaying said judgment and defrauding this de-

fendant, and are revived and set forth in this suit to delay and defraud this defendant as one of the creditors of said complainant.

And this defendant says, all and singular said alleged claims against this defendant, and the causes of defence and set-off against said suit in said New York court, were and are false and frivolous; because—

77 1. That said action and judgment was founded in the cause hereinbefore set forth.

2. Said debt, or the judgment thereon, has never been paid, reduced, satisfied, or reversed.

3. That said complainant did not at said time hold such evidence of indebtedness, or any evidence of indebtedness, against this defendant as he alleges he put into the hands of said Stewart.

4. That said defendant was not legally or otherwise liable for the payment of any claim said complainant had, or pretended to have, against said John Clark.

And this defendant further answering, says that he does 78 not know, and has not been informed, how said Stewart conducted in regard to the complainant's said exhibits annexed to his said bill marked C, but he does know and say, that all and singular said items of said exhibit are and were groundless and frivolous, and that no one item therein contained is or was valid; and he says that he has truly and fully accounted for and paid over all the money, property, or other effects which have at any time come into his hands for or on account of said complainant, whether from said John Preston, or from any other person or persons.

And this defendant has been informed, and believes, that said Stewart faithfully and perseveringly resisted said suit, and to the extent of his ability labored to defeat the same. And this defendant further says, that neither before nor since, nor at the time of 79 said suit, had he any consultation, agreement, or understanding with said Stewart in regard to said suit, or any other matter or thing, nor has he and his counsel fraudulently colluded or conspired with said Stewart to procure a default of said complainant or to defeat his alleged defence in said suit; nor was this defendant then, nor has he been at any time since, indebted to said complainant, nor had any moneys, rights, credits, or effects of said complainant in his hands.

This defendant does not know, and has not been informed, how long said complainant remained ignorant of the alleged conduct of said Stewart, nor what instructions said complainant's counsel gave him touching this defendant and William H. Y. Hackett's said bill, and the defence to them *on* either of them; nor how he was advised 80 in regard to said pretended sale; nor whether said Charles H. Dougherty or Michael Dougherty, one or both, made the claims or threats set forth in said bill.

This defendant denies, all and singular, the charges of combining, conspiring, or confederating, or any or either, with said defendants for any or either of the purposes charged; but he admits that he petitioned said United States district court for the district of New Hamp-

shire for the appointment of said William H. Y. Hacket as assignee as aforesaid, and that he and said Hackett, at the time and in the court set forth, preferred their respective petitions by way of bill for the purpose and to the effect set forth in the complainant's said bill.

This defendant does not know, and has not been informed,
81 whether said complainant did or did not employ said John L. Hayes as he has complained; but he denies that said Hayes at any time did, or omitted to do, anything in said several suits brought by this defendant and said Hackett except for the purpose of defeating both of said suits and obtaining said award for said complainant; nor does he know what instructions said complainant gave said Hayes; but he does know and says that the "specific" instructions set forth in said bill as having been given to said Hayes, were and are based upon no foundation in fact and truth, but were and are false and frivolous.

And this defendant denies all and all manner of combinations, conspiracies, and confederacies charged against him in said bill of
82 complainant, without that any other matter or thing in said bill of complainant contained and alleged against this defendant, and not herein and hereby answered unto, confessed or avoided, traversed or denied, is true, to his knowledge or in his belief; all of which matters and things this defendant is ready to aver, prove, and maintain as this honorable court shall direct; and he prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

B. C. CLARK.

83 And the said J. Hopkins Stewart and Michael Dougherty, now and at all times saving and reserving to themselves all advantage and benefit of exceptions to the errors and imperfections contained in the said bill of complaint of the said complainant, in answer thereto, or for so much thereof as they are advised it
84 is material for them to make answer unto, they, upon oath, answering the said Stewart, admits, that said Ferdinand N. Clark did, on the twenty-eighth day of January, A. D. 1843, file his petition in the district court of the United States within and for the district of New Hampshire to be declared a bankrupt; and that on the 22d day of March, A. D. 1843, the said complainant was declared a bankrupt; and that on the 17th day of December, A. D. eighteen hundred and forty-four, the said complainant, by said district court, was decreed, discharged of and from all his debts owing by him in his private right and capacity at the time of presenting his said petition; and that said district court appointed one John Palmer, of South Hampton, in said State of New Hampshire, assignee, as is alleged in said bill of complaint.

And this defendant further answering, admits that on the
85 14th day of March, 1845, said district court decreed a license to said John Palmer, assignee as aforesaid, to sell the assets of said bankrupt within the time and in the manner as is alleged in said bill of complaint.

And this defendant further admits that said John Palmer did sell at public auction all the assets of the said bankrupt to one R. M. Clark for the sum of two dollars, and then and there executed to said R. M. Clark a bill of sale; but whether sufficient in law this defendant will not admit and therefore denies.

And this defendant further answering, says that he has been informed, and believes, and therefore admits, that said R. M. Clark sold and transferred to said complainant all the assets sold by said assignee to said R. M. Clark.

86 And the said defendant, J. Hopkins Stewart, further answering for himself, says, that he has been informed, and clearly charges the fact so to be, that all of such proceedings in bankruptcy, by said Ferdinand Clark, were and are fraudulent and void as against the creditors of said Ferdinand Clark, and that said sale of said bankrupt's effects to said R. M. Clark was and is fraudulent and void as against the creditors of said Ferdinand Clark, and this defendant charges that the said bill of sale, from said R. M. Clark to the said bankrupt Clark, was and is fraudulent and void.

And these defendants, further answering, admit that among said assets purchased by him was a certain claim against the republic of Mexico for the seizure of the cargo of the schooner Louisiana on or about September, A. D. eighteen hundred and twenty-five, and that for said claim the said Ferdinand Clark was awarded, by a board

87 of commissioners duly appointed and authorized to settle the claims of American citizens against the republic of Mexico, under the treaty of the second day of February, A. D. one thousand eight hundred and forty-eight, and an act of Congress of the third of March, A. D. 1849, the sum of eighty-six thousand seven hundred and eighty-six dollars and twenty-nine cents, payable from the treasury of the United States.

And the said defendant, J. Hopkins Stewart, further admits that one Benjamin C. Clark, of Boston, in the Commonwealth of Massachusetts, did, on the fifteenth day of May, 1850, petition by bill the honorable circuit court of the United States within and for the District of Columbia, for an injunction, &c., as is alleged in said bill.

88 And the said defendant, Stewart, further answering, admits that said B. C. Clark did, in said petition, claim to be a creditor of the said Ferdinand Clark by force and virtue of a certain judgment rendered against the said Ferdinand Clark on the 24th day of June, A. D. 1842, by the consideration of the justices of the superior court within and for the city and county of New York, and in favor of the said Benjamin C. Clark against the said Ferdinand Clark, for the sum of twenty-five thousand four hundred and fifty-three dollars and twenty-eight cents.

And the said defendant, J. Hopkins Stewart, further answering, denies the said general allegation in said bill that said judgment in favor of the said B. C. Clark was obtained by fraud and collusion.

And the said J. H. Stewart further admits that one William H. Y.

89 Hackett was duly appointed assignee instead of John Palmer, deceased, by decree of the district court of New Hampshire.

But whether he was so appointed on the petition of one Charles G. Nazro, and what facts said petition contained, or whether said Nazro was at the time a copartner of said B. C. Clark, this defendant has no knowledge, and leaves the said complainant to make such proof thereof as he shall be advised.

And the said defendant, J. H. Stewart, further answering, says that he admits that the said circuit court of the District of Columbia decreed that the amount of the award aforesaid be paid by the Secretary of the Treasury aforesaid to the said William H. Y. Hackett, assignee as aforesaid, to be by him, under the said decree and orders of the district court of New Hampshire, distributed to the said Ferdinand N. Clark's creditors in bankruptcy. And this defend-
90 ant, Stewart, further admits that said Ferdinand N. Clark appealed from the judgment of the said court of the District of Columbia to the Supreme Court of the United States, and that such proceedings were had in said Supreme Court that the judgment of the said circuit court was affirmed. And the said defendant, Stewart, further answering, admits that the said Secretary of the Treasury of the United States paid over to the said William H. Y. Hackett, as assignee, unto this court for the district of New Hampshire, the whole sum of said award, less twenty per cent. allowed Major F. F. Lally and James S. Thayer, the agents who prosecuted the said claim against the republic of Mexico. But whether said Lally and Thayer were justly entitled to such compensation or any compensation in the premises this defendant is not informed,
91 and therefore, with a view to preserve the rights of parties interested in said fund, this defendant denies that said Lally and Thayer were entitled to any compensation or to the twenty per cent.

And these defendants further answering, say that they have no knowledge, therefore cannot admit or deny the allegation contained in the said bill in regard to said Ferdinand N. Clark being indebted to said Benjamin C. Clark & Charles D. Nazro, copartners, in the sum of nine hundred and seventy dollars and twenty-six cents.

And these defendants further answering, say that they have no knowledge, information, and belief as to the fact whether the said Ferdinand N. Clark, at the time of filing his petition in bankruptcy, or at any other time since, did owe to the said Benjamin C.
92 Clark the amount of the judgment, or any part thereof, as set forth and described in the said Benjamin C. Clark's proceedings and bill presented to the circuit court of the District of Columbia, and therefore these defendants neither admit or deny the allegation contained in said bill in regard to said fact of indebtedness or said judgment. And whether the said Benjamin C. Clark and Charles D. Nazro, as copartners in the said Benjamin C. Clark individually, were on the 28th day of January, A. D. 1843, debtors in a large amount to the said Ferdinand N. Clark, or whether they (the said Benjamin C. Clark or Charles D. Nazro) were copartners, these defendants will not admit or deny.

And the said defendant, Joseph Hopkins Stewart, further answer-

ing, says that he has been informed, and verily believes, that the said John Palmer left unsold many of the effects of the said Ferdi-
93 nand N. Clark, and also unfinished the proceedings in bankruptcy at the time of his death, and this defendant denies that said John Palmer closed and finished all the business pertaining to the said bankrupt estate on the ninth day of April, A. D. 1845.

And the said defendant, Joseph Hopkins Stewart, further answering, says that he denies that said William H. Y. Hackett did violate and exceed the authority of the court and *did misrepresent* the facts in relation to the proceedings in bankruptcy to the said circuit court of the District of Columbia, and to said Supreme Court of the United States, and this defendant denies each and every allegation of said Ferdinand N. Clark, as alleged in said bill, regarding the fraud and misrepresentation of said William H. Y. Hackett, as made to said courts, &c., &c.

94 And these defendants further answering, aver that when the said John Palmer as aforesaid sold the effects and assets of the said Ferdinand N. Clark, on the 9th day of April, 1845, at public auction, the said claim against the republic of Mexico was considered by the said Ferdinand N. Clark a good, available, and valuable claim, and that the same would soon be collected and realized. But whether the said John Palmer had any knowledge of the value of the claim or not these defendants cannot admit or deny. These defendants, however, aver that if said Palmer was ignorant of the value or supposed value of said Mexican claim he was guilty of great latches, and was wholly deceived and defrauded by said Ferdi-
95 nand N. Clark, who, these defendants verily believe, for the purposing of practising a cheat and fraud on said John Palmer and on said court sitting in bankruptcy, and on the creditors of said bankrupt, did not in any manner describe said claim so as to make the same available to his creditors, or in any way to make the value thereof known. And these defendants further aver that all evidences and proofs in support of said claim were fraudulently withheld by said Clark from said assignee. And this defendant, J. H. Stewart, avers that the said Ferdinand N. Clark did, at the time of the presentation of his schedule of assets and his petition to be declared a bankrupt, possess and control evidences, documentary and otherwise, of the value of said claim against Mexico, and that, for the purpose of thereafter possessing himself again of said
96 claim, and with a view of deceiving his creditors and said assignee, did by false and fraudulent representations of the facts, and a false and fraudulent concealment of the truth in regard to said claim, its value, and the proofs to sustain it, and his then present and sanguine hopes in regard to its realization, did so describe and set forth in the schedule of his (the said bankrupt's) assets, the said claim against the republic of Mexico, and other claims of great value, as to deceive and keep in ignorance the said assignee of their true value. And this defendant avers that no right, title, interest, or estate in and to said Mexican claim ever passed out of the said assignee to any person whatever, or in any manner whatever re-

verted to the said Ferdinand N. Clark, and none of the assets alleged to have been purchased by said R. M. Clark, and by her sold
97 and transferred to said Ferdinand N. Clark, did in any manner, or did any property and estate therein, pass to said Ferdinand Clark. And this defendant avers that all the property, effects, and assets of said bankrupt of every name and nature, and all the evidences thereof, now rightfully and legally belong to the said William H. Y. Hackett, subject, nevertheless, to all previous liens and incumbrances thereon as assignee as aforesaid of Ferdinand N. Clark. This defendant respectfully submits to this honorable court that the said Ferdinand N. Clark shall, by a decree of this court, be compelled to deliver into the possession of said William H. Y. Hackett all and all manner of property that he in any manner obtained from the said John Palmer under and by virtue of said sale, as aforesaid,
98 made by said John Palmer to said R. M. Clark, and by said R. M. Clark transferred to said bankrupt, and that said sale and transfer may by decree of this court be made absolutely void.

And the defendant, Stewart, further answering, says that he denies each and every allegation of said Ferdinand N. Clark in regard to the difficulty of prosecuting said Mexican claim and of the great value of his individual services therein, and this defendant denies the truth of any of the allegations contained in said bill regarding the great skill and effort made by the said Ferdinand N. Clark to procure the said claim to be allowed. And this defendant avers that he has been informed, and believes, that said claim was easily established and proved, and that Charles H. Dougherty, esq., of the city of Brooklyn and State of New York, a counsellor at law, is entitled to more
99 credit for services rendered in perfecting said claim—in the way of procuring evidence thereof and documentary proofs from Mexico, &c.—than any other person.

And this defendant, Joseph Hopkins Stewart, further answering, says that he denies that said Ferdinand N. Clark is justly entitled to any of said award, and in this connexion this defendant avers that he has been informed, and verily believes, that said assignee, William H. Y. Hackett, as such assignee in bankruptcy, holds such fund or award subject to all prior just liens and encumbrances; and this defendant avers that one William A. Booth, of the city of New York, was duly appointed a receiver of all the goods, chattels, and credits, choses and things in action of said Ferdinand Clark, by order of the
100 court of chancery of the State of New York, on the third day of August, 1842, and that said Ferdinand N. Clark had been duly enjoined previously thereto from making any disposition of any of his said property; and this defendant avers that said William A. Booth became legally qualified to act as such receiver, and that the court of chancery of the State of New York, in a certain suit then pending and undetermined, wherein one Juan De la Camara was complainant and the said Ferdinand N. Clark was defendant, acquired full and ample jurisdiction over the subject matter of said suit, as well as over the person and property of the said Ferdinand N. Clark, and that said William A. Booth was appointed a receiver

in said suit, and as such receiver *ipse facts* he became vested with all and singular the property and things and choses in action of
101 said Ferdinand N. Clark. And this defendant avers that said Booth, as such receiver, acquired a lien upon the said Mexican claim while in the hands of said Clark, which lien followed said claim by operation of law into the hands of said John Palmer, and thereafter until said award was made thereon, and is now in law a fixed and absolute lien upon the fund in the hands of said Hackett or in the said court, and that said Booth, as such receiver, has not in any way been divested of said lien, and is now entitled to the possession of the whole fund or award in the district court of New Hampshire.

And this defendant submits to this court that said William A. Booth, whenever he may apply to this court, is entitled to an order from said court directing and authorizing said assignee to dis-
102 charge said lien.

And the said defendant, J. H. Stewart, further answering, says that he admits that said F. Clark did employ him (this defendant) as his attorney and counsellor to defend the said suit brought by said B. C. Clark against said F. Clark, but this defendant denies that said F. Clark did pay to this defendant his reasonable fees and charges therefor. And this defendant further says that whatever merits the defence of said Ferdinand Clark to the claim of B. C. Clark in that suit possessed, he, (this defendant,) in due and proper time, and by due and proper pleas, presented to said superior court. And this defendant avers that at all times during the progress of said cause to the final issue thereof this defendant did, with all due zeal,
103 and the best of his ability, defend the said Ferdinand Clark therein.

And this defendant further says that during the progress of said cause said Ferdinand Clark induced this deponent, by various pretences of defence to said action, to obtain from said court postponement of the trial of said cause from one term of said court to another. And this deponent further says that after said F. Clark had obtained of said court all the delay that he could reasonably expect, and after this defendant had, by letter and by verbal messages, repeatedly called said F. Clark's attention to the fact of the pressing necessity of being prepared for the trial of said action, this defendant addressed to said Clark a letter dated May 30, 1842, and also another letter dated June 9th, 1842, copies of which letters this de-
104 fendant annexes to this his answer, and prays this court to accept of them as as part thereof, by way of defence to the unjust accusation contained in said bill of complaint impugning this defendant's professional integrity.

And this defendant further answering, says that after a great deal of effort made by the most strenuous opposition, this defendant did, after having already obtained from said court many postponements, obtain from said court an order staying the proceedings of said plaintiff, B. C. Clark, on the conditions and terms as mentioned in the defendant's letter of June 4, 1842, reference being had thereto.

And this defendant further says that F. Clark, after having obtained from said court leave to send to Havana a commission
105 to take testimony, and a stay of proceedings, on condition of his paying certain costs, &c., he failed to avail himself of said conditions, and refused, although often requested, to pay the necessary costs, and subsequently he attempted to prevail on said B. C. Clark to visit the city of New York for the purpose of settling their matters in difference, and to that end the said Clark induced this defendant to address to B. C. Clark a letter, a copy whereof is annexed, dated June 23d, 1842. which several letters, above referred to, were respectively received by said F. Clark and B. C. Clark.

And this defendant, Stewart, further answering, says that all the pretences and allegations contained in said bill of complaint of said F. Clark, imputing a want of good faith and integrity on the
106 part of this defendant as the attorney and counsellor of said F. Clark, are untrue and maliciously false.

This defendant, Stewart, further answering, denies all the allegations in said bill of complaint charging this defendant with having colluded with said B. C. Clark in regard to his obtaining said judgment, and this defendant charges all and each and every of said allegations touching collusion with said B. C. Clark and want of good faith and fidelity in the discharge of this defendant's duty as attorney and counsellor, as being false and malicious.

This defendant admits that he received from said F. Clark certain notes made by John Clark, of Boston, but what the amount of said notes were this defendant cannot state. But defendant denies that said notes were received for the object and purposes alleged
107 in said bill, and denies that they could by any means have been in law a set-off to said B. C. Clark's claim, and avers that said notes were worthless, and that said notes were transferred to this defendant as collateral security to pay his (said F. Clark's) debt to this defendant. And this defendant avers, after making diligent effort to collect said notes from said John Clark, and after learning that said John Clark was insolvent, he (this defendant) abandoned all hope of realizing anything for said notes.

Defendant, Stewart, further answering, says that it may be true that said F. Clark did, by letter and otherwise, instruct this defendant as to the various matters of defence to said suit. And this defendant avers that said Clark never was ready to make proof
108 of his defence, or of any of the matters which he alleged he could prove, and in no one instance did the said F. Clark ever act like a man or client having a meritorious defence, but always avowed his desire to procure delay and postponement of the trial of said cause for some sinister motive and object. And this defendant avers that said Ferdinand Clark had, by the rules and practice of the said superior court, full and ample time within which to have moved said court, on good cause shown, to have opened the said judgment of the said B. C. Clark against him, and this defendant submits that it is now too late, and that this court will not in that particular afford relief to said Clark.

And this defendant, Stewart, avers that during the pendancy of the proceedings in the district court of the District of Columbia,
109 at Washington, the said Ferdinand Clark had full and ample means to have interposed any and all possible defence that he may have had to said B. C. Clark's petition or bill, and that, in said proceedings in said court, the fraud of said Ferdinand Clark in the matters of his bankruptcy, and also in the matter of his purchase of said Mexican claim, were fully alleged, proved, and sustained in said court against said F. Clark, and that said court finally adjudged said sale of said Mexican claim to be void and fraudulent, and that said award did not belong to said F. Clark, but that it did of right belong to said Hacket, as such assignee, and which judgment of said court was afterwards affirmed on appeal by the Supreme Court of the United States.

110 And this defendant therefore submits that the substantial matters and things in this bill of F. Clark have already been passed upon and finally adjudicated, and that, if he failed to set up and prove other matters of defence in the proceedings in the circuit court at Washington, he is now and forever remediless in the premises.

And the said Michael Dougherty, one of the above defendants, for answer to said bill, or for so much thereof as he deems material and necessary for him to answer unto, says that he denies the allegation contained in said bill regarding this defendant's claim to one quarter part of said award and of this defendant's threat that he would tie up the said award in Washington, in the District of Columbia,
111 and that complainant would not get any part of said award. And this defendant further says that the said Ferdinand Clark always did promise to this defendant that he would pay to the said Chas. H. Dougherty the one quarter part of any award that thereafter might be allowed to said F. Clark and to this defendant, that he would fully reward this defendant for all the labor, time, and money he might expend in the matter. In consideration of this, defendant aiding and assisting said Ferdinand Clark in his efforts to establish said Clark's claims to said award. And this defendant avers that he did expend considerable money and a great deal of time and labor for said Ferdinand Clark in the premises, well and confidently re-
112 lying upon said Clark's promise to reward him as he had promised to do. But this defendant avers that said Clark failed to perform his said promise, and that said Clark now is justly indebted to said Chas. H. Dougherty in a sum equal to one-fourth part of said award. And that said Chas. H. Dougherty should, by the decree of this honorable court, be entitled to a lien on said award or fund in the custody of this court in preference to any creditor of the said Ferdinand Clark to the amount of one-fourth part of said award by reason of the services rendered and performed by the said Chas. H. Dougherty for the said Ferdinand Clark in the creation of said award, and that in law the said Ferdinand Clark is, as this defendant is advised and verily believes, indebted to this defendant in a sum that will amply compensate him for all the labor

113 and service this defendent performed in and about the business of the said Clark towards the procurement of said award and for money expended for said Clark in the matter and at the special instance and request of said Clark.

And these defendants further answering, say they, individually and collectively, deny all knowledge of any conspiracy, collusion, and confederacy, as between themselves, or as between either of these defendants or both, and one John L. Hayes, and the said William H. Y. Hackett and Chas. H. Dougherty and Benjamin C. Clark. And these defendants allege that said allegations and changes in said bill contained, involving these defendants, and charging them with having been and of being guilty of fraud, collusion, confed-
114 eracy, and conspiracy with the other defendants named in said bill are untrue and false. And these defendants deny all combinations and confederacy charged against them in said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true, to their knowledge or belief. All which matters and things these defendants are ready to aver, prove, and maintain as this honorable court shall direct, and pray said bill hence to be dismissed, with their costs and charges in this behalf most wrongfully sustained.

115 And now, at the October term of this court, A. D. 1856, in this cause, the court having inspected the bill, doth order that the same be dismissed for want of jurisdiction; from which decree the said Clark, on the sixth day of November, A. D. 1856, claims an appeal at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia.

And now, upon the fourteenth day of May, A. D. 1861, comes the said Ferdinand N. Clark, and files his petition here as follows:

To the honorable the justices of the circuit court of the United States for the district of New Hampshire, respectfully represents: Ferdinand N. Clark, of Roxbury, in the county of Norfolk and
116 State of Massachusetts, that on the eighteenth day of March, A. D. 1856, your petitioner filed in this honorable court his bill of complaint against Benjamin C. Clark and John Clark, both of Boston, in the State of Massachusetts, William H. Y. Hackett, of Portsmouth, in the State of New Hampshire, John L. Hayes, of Washington, in the District of Columbia, Joseph H. Stewart, Michael Dougherty, and Charles H. Dougherty, all of the city, county, and State of New York, and that a final decree was made thereon at Boston on the twenty-eighth day of October, A. D. 1856, which your petitioner believes to have been erroneous. Wherefore he prays your honors may be pleased to allow an appeal to be taken to the Supreme Court of the United States next to be holden at Washington
117 on the first Monday of December next, the amount sought to be recovered exceeding the sum of two thousand dollars.

FERDINAND N. CLARK.
H. B. FERNALD, *Solicitor.*

Circuit Court, May 15th, 1861. Upon the foregoing petition it is ordered that the appeal of said Clark be allowed, upon condition that within ten days he file in the clerk's office a bond in the sum of five hundred dollars, with sufficient sureties to the satisfaction of the clerk, with condition to prosecute his appeal with effect, and pay all such costs and damages as shall be awarded against him.

Attest: ALBERT R. HATCH, *Clerk.*

118 And thereupon, on the twenty-fourth day of May, A. D. 1861, the said Ferdinand N. Clark filed his bond as follows:

Know all men by these presents, that we, Ferdinand N. Clark, of Roxbury, in the county of Norfolk, and State of Massachusetts, as principal, and George W. Frothingham and John Emerson, both of Boston, in the county of Suffolk, and State aforesaid, as sureties, are holden and stand firmly bound unto Willliam H. Y. Hackett, of Portsmouth, in the county of Rockingham, and State of New Hampshire, Benjamin C. Clark and John Clark, both of Boston aforesaid, Michael Dougherty, Charles H. Dougherty, and Joseph H. Stewart, all of the city, county, and State of New York, and John L. Hayes, of Washington, in the District of Columbia, in the full and just

119 sum of five hundred dollars, money of the United States, to be paid unto *to* the said Wm. H. Y. Hackett, Benjamin C. Clark, John Clark, Michael Dougherty, Charles H. Dougherty, Joseph H. Stewart, and John L. Hayes, their executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Whereas lately at a circuit court of the United States for the district of New Hampshire, to wit, at the October term, A. D. 1856, of said court, in a cause in equity, wherein the said Wm. H.

120 Y. Hackett, Benjamin C. Clark, John Clark, Michael Dougherty, Charles H. Dougherty, Joseph H. Stewart, and John L. Hayes are defendants and the said Ferdinand N. Clark is complainant, a decree was rendered against the said Ferdinand N. Clark, and he having prayed at the May term, A. D. 1861, of said circuit court, for an appeal from said decree to the Supreme Court of the United States, and the same having been allowed.

Now the condition of the above obligation is such that if the said Ferdinand N. Clark shall prosecute his said appeal to effect, and pay all costs and damages which he may be adjudged to pay by reason of the appeal, then the above obligation to be null and void;

121 otherwise to be and remain in full force and virtue.

F. N. CLARK. [L. S.]
JOHN EMERSON. [L. S.]
GEO. W. FROTHINGHAM. [L. S.]

In presence of—
J. P. CLARK.

DISTRICT OF NEW HAMPSHIRE, *ss:*

Circuit court of the United States.

I, Albert R. Hatch, clerk of the circuit court of the United States for the district of New Hampshire, do certify that the foregoing is a true copy of the record in the cause in equity wherein Ferdinand N. Clark was complainant and Benjamin C. Clark and others defendants, now remaining in said court.

[L. S.] In witness whereof I have hereunto set my hand and the seal of said court, this 17th day of November, A. D. 1861.

ALBERT R. HATCH, *Clerk.*

SUPREME COURT OF THE U. S.

DECEMBER TERM, 1861.

IN EQUITY---No. 256.

FERDINAND N. CLARK

v.

WM. H. Y. HACKETT,
BENJAMIN C. CLARK,
JOHN CLARK,
CHARLES H. DOUGHERTY,
MICHAEL DOUGHERTY,
JOSEPH HOPKINS STEWART,
JOHN L. HAYES.

This is a Bill in Equity, and was filed in Circuit Court of the United States for the N. H. District, March 18, 1856, to set aside the decree of the C. C. of the U. S. of the District of Columbia, and of this Court affirming that decree, as reported in 17 Howard 315, upon the ground that they were procured by the fraud of the Defts. The parties are described as follows: The Plff. F. N. Clark, and two of the Defts., Benjamin C. Clark, and John Clark

of Massachusetts; William H. Y. Hackett of New-Hampshire; Charles H. Dougherty, Michael Dougherty, and J. H. Stewart, of New-York. The answers of most of the Defts. were filed in the summer, and the case argued and dismissed October, 1856, for want of jurisdiction. Judge Curtis holding that the Bill not only showed the Court had no jurisdiction, but that it could not be amended so as to confer jurisdiction. From this decision F. N. Clark claimed an appeal, which claim was filed Nov. 7, 1856. This appeal, upon the motion of the Hon. Revedy Johnson, was docketed and dismissed Feb 10, 1857, and the mandate issued from this Court to the Court below, Feb. 13, 1857. (Calendar Dec. Term, 1856, No. 255.)

On the 13th of June, 1857, the said F. N. Clark filed in the C. C. of the U. S. for the N. H. District, his Bill in Equity against Wm. H. Y. Hackett alone for the same alleged cause of action as in the other suit, and sets forth "that B. C. Clark, John Clark, and C. G. Nazro, though proper to be joined as parties Defts., are not joined, because they, being citizens of the State of Massachusetts, cannot be joined as parties Defts. without ousting the jurisdiction of the Court as to the other parties." (Printed copy of record in second suit, No. 67, page 13). The cause of suit is the same in both Bills. The allegations against all the Defts. in the first suit are the same in the second suit.—The only difference is, that the last suit is brought against Hackett alone, as Clark in his Bill says to avoid ousting the Court of its jurisdiction.

This case having been fully and elaborately argued on both sides, was at the October Term, 1859, decided in favor of the said Hackett, and thereupon said Clark took an appeal to this Court. The case, 67, was decided a few

weeks ago in favor of the Deft. At the May Term, 1861, of the Circuit Court, Clark petitioned to bring forward the first named suit, and to amend his Bill so that it might appear on the face of the Bill that the Court had jurisdiction of the suit which was dismissed in 1856 in C. C. of the U. S., docketed and dismissed by this Court in 1857. This petition was overruled and then Clark claimed an appeal to this Court, upon the ground that he had not complied with the order of the Court in 1856 to file a bond to pay cost—and so the appeal had not been perfected, and the right to appeal was now open to him. This appeal was allowed, and this is the suit, No. 256, which I now move to dismiss for the following named causes.

I. For matter apparent on the face of the record, the Court below had no jurisdiction of this case, because the Plaintiff and three of the Defts. are described as of the State of Massachusetts.

☞ *I am aware that the record is not printed. But if the Court will read the first and two last pages of Clark's Bill, they will see the grounds of Judge Curtis' decision.*

II. The cause set out in this suit is identical with that in No. 67 decided this Term, and is not open to the Plff. to litigate.

III. That an appeal in this case was entered Nov. 7, 1856, and subsequently docketed and dismissed by this Court Feb. 10, 1857. It is not competent for Clark to take advantage of his own wrong in not filing bonds to pay costs, and to say that this Court, for that reason, could not docket and dismiss this appeal. There was no order of Court that he should file bonds to pay costs.

IV. Because no citation to the Defts. has been issued, and no notice given to the Defts. or either of them of this

appeal. WM. H. Y. HACKETT, one of the Defts., was in Court when the appeal was allowed—but notified the Court and the appellant that he was not counsel for the other Defts. He appears now only for the purpose of moving to dismiss this appeal.

V. This appeal is vexatious, and taken to annoy the Assignee and delay the creditors of Ferdinand N. Clark. It sets up no right of the appellant which this Court has not considered and determined.

WM. H. Y. HACKETT,
Pro Se.